

Chapter 1. Community Services Block Grant Regulations

§100601. Definitions.

For the purposes of these regulations:

(a) "Affected public" means interested parties and eligible entities as defined in Government Code Section 12730(e).

(b) "CAA" means community action agency as defined in Government Code Section 12750(a).

(c) "CCSBG" means California Community Services Block Grant.

(d) "Contract" means a statement of grant action which when cosigned by authorized agents of the Department and the grantee, and subsequently approved by the Department of General Services pursuant to Section 10295 of the Public Contract Code, is deemed a valid, enforceable agreement.

(e) "CSA" means Community Services Administration.

(f) "CSBG" means Community Services Block Grant.

(g) "Indian tribe" and "tribal organization" means those tribes, bands, or other organized groups of Indians recognized in the State in which they reside or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

(h) "LPA" means limited purpose agency as defined in Government Code Section 12775(a).

(i) "MSFW" means Migrant and Seasonal Farmworker as defined in Section 100620 of these regulations.

(j) "DEO" means State Department of Economic Opportunity as defined in Government Code Section 12085.

(k) "Target Area" means a contiguous territory with a high incidence of poverty in which a grantee concentrates or desires to concentrate its operations.

(l) "Reasonable Opportunity" as used in Government Code Section 12730(k)(2), shall mean a period of 90 days from the date notice is sent to the designated CAA stating that it has failed to comply with the requirements of Government Code Section 12725 et. seq.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12725 et seq., Government Code.

§100605. Tripartite Board Composition.

(a) Tripartite Board Composition.

(1) Any community action agency which is an eligible entity to receive funding under CSBG shall have a tripartite board as described in the Government Code Sections 12750(a)(2) and 12751.

(2) If an eligible CAA is a public CAA which has the additional requirements of a governing board composed of officials of the local political subdivision such as the county board of supervisors or city council, a community action board shall be established to satisfy the tripartite board requirement.

(3) The community action board shall have at least 12 members and not more than 30 members. The membership of the board shall be divisible by 3 in order to implement the tripartite requirement as stated in Government Code Section 12751.

(b) Public Sector Representation.

(1) For the purpose of Government Code Section 12751(a), appointive public officials are defined to include employees of agencies and members of boards established under State or local law who have the responsibility and authority to decide and carry out the policy of those agencies or boards.

(2) Public officials who are designated for representation on the community action board may choose representatives to serve on the board in their place or in their absence. The representatives need not be Public officials themselves so long as they are entitled to speak and act for the officials whom they represent in connection with the board's business.

(c) Low-Income Representatives.

(1) "Democratic selection process" for the purposes of this article, shall be defined as a methodology reflecting the choice(s) of the people.

(2) Although representatives of the poor need not themselves be poor, they must nonetheless be selected in a manner which ensures they truly represent the poor.

(3) Area Representatives of Low-Income Persons. Should a community action program be concerned primarily with compact geographic areas in which poverty is concentrated, such as neighborhoods or “target areas” of the community, the representatives of the low-income shall be selected by the residents of those neighborhoods or areas. All residents of any such neighborhood or area may participate in the selection process, but special emphasis and attention must be given to ensuring that those residents who are poor participate fully in the selection process. The number of representatives to be selected from each area of concentration of poverty, in relation to the total number of representatives of the low-income on the board, should be proportionate to the number of low-income persons in the area, as compared to the number of low-income persons in the community as a whole.

(4) Non-area Representatives of Low-Income Persons. In some communities or parts of communities it may not be feasible for some or all of the representatives of the poor to be selected on a neighborhood or target area basis (for example, in a rural community where poor persons are scattered throughout the entire area or, in an urban community where there may be a neighborhood in which poverty is concentrated, but where poor people reside outside such neighborhoods). In such cases, representatives of the low-income population shall be selected only by the low-income population, whom the community action program is intended to serve and who reside outside of areas where poverty is concentrated. The non-area representatives should themselves live outside of any target areas separately represented under subsection (3) of this section. The number of such “non-area” representatives, in relation to the total number of representatives of the low-income on the board, should also be proportionate to the number of low-income persons living outside geographic areas in which poverty is concentrated, as compared to the number of low-income persons in the community as a whole.

(5) Selecting Representatives of Low-Income Persons. In the selection process, whether for area or non-area representatives of the poor, to the maximum extent possible, the low-income groups and individuals to be represented should be involved. Among the selection processes that may be utilized, either alone or in combination, are:

(A) Nominations and elections, either within neighborhoods, or within the community as a whole.

(B) Selection at a meeting or conference to which all neighborhood residents, and especially those who are poor, are invited.

(C) Selection of representatives to a community-wide board by members of neighborhood or sub-area boards, who are themselves, selected by neighborhood or area residents.

(D) Selection, on a small area basis (such as a city block), of representatives who in turn select members for a community-wide board.

(E) Selection of representatives, either directly to a Community Action Board or for membership on a neighborhood board, by existing organizations whose membership is predominantly composed of low-income persons.

(F) This list is not intended to limit the variety of selection processes which may be used. Any democratic selection process ensuring the maximum feasible participation of the poor is potentially acceptable. In all cases attention should be given to the fair representation of significant minority groups within the community.

(6) The designating officials of a CAA shall select candidates for low-income seats, who are declared low-income over persons desiring to represent the low-income community, who are not declared low-income.

(d) Private Sector Representation.

(1) In choosing private sector participation CAA's shall select groups and interests to ensure that the board is securing broad community involvement.

(2) Once the groups and interests to be represented have been selected, their respective representatives on the board shall be chosen by those groups and interests.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12751, Government Code.

§100610. Designation and Recognition of a New or an Alternate CAA.

(a) Process for Designation. A political subdivision seeking designation of a new or alternate CAA, shall follow all the requirements set forth below as follows:

(1) Notice of Intent to Designate. A written notice of intent to designate shall be prepared by the political subdivision which shall designate a new or alternate community action agency. This notice shall be posted in a public place, mailed to the Department, and mailed to municipalities within the political subdivision and shall be placed in the newspaper having the widest circulation within the political subdivision. The notice shall clearly indicate the following:

(A) Indicate any specific proposal for designation.

(B) Indicate that testimony will be taken at the public hearing.

(C) The date, time and location of the public hearing to consider the question of CAA designation.

(D) Advise the public of the opportunity to submit written comments to the political subdivision prior to the public hearing.

Public Hearings. The public hearings for designation of recognition of a new or alternate CAA, shall be carried out pursuant to the local laws (i.e., statutes, ordinances, or regulations) governing public hearings, normally adhered to by the political subdivision to assure the public has an opportunity to comment on the CAA designation process.

(3) Legislative passage of an Act, Ordinance or Resolution of Designation. Having conducted at least one public hearing, the political subdivision shall make a designation in the same manner in which they normally exercise their legislative jurisdiction.

(4) Application for Recognition. After a political subdivision has made a designation, the designator shall submit to DEO two copies of an application for provisional recognition as a CAA. This application is composed of the following documents:

(A) Statement requesting recognition as a community action agency.

(B) The designation documents (i.e., act, ordinance, or resolution) together with the certification documents from the political subdivision.

(C) The notice of intent to designate and a list of the locations where such notice was posted as proof of newspaper publication.

(D) Minutes of the public hearing during which the CAA was designated.

(b) Granting of Recognition. After determining that all of the aforementioned requirements have been met, DEO will grant to the applicant agency provisional recognition.

(1) Upon receipt of the notification of provisional recognition status, the applicant shall proceed to organize itself, to select and appoint the members of its governing or administering board, to formally adopt bylaws and to otherwise prepare itself for final recognition.

(2) An applicant who has received provisional recognition shall submit a map of the area to be served by the applicant to DEO.

(3) Upon receipt of the above indicated items, DEO will review same to determine whether or not the applicant has complied with all pertinent requirements of Section 12750 et seq. of the Government Code and the Community Services Block Grant Program. Upon DEO's determination that the applicant has satisfied all compliance

requirements, the Department will provide written notification to the applicant that final recognition has been granted.

NOTE

Authority cited: Sections 12781(d) and 12780, Government Code. Reference: Sections 12750 et seq. and 12781(c)(5), Government Code.

§100615. Bylaws.

Community action agencies shall submit to DEO a copy of their current bylaws. Any amendments to the bylaws shall be submitted to DEO prior to the adoption of such amendments. However, DEO approval of bylaw amendments is not required prior to the adoption of such amendments.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12753(a), Government Code.

§100620. MSFW Beneficiaries.

(a) For the purposes of these regulations “Migrant Farmworker” shall mean a seasonal farmworker who performs or has performed farmwork during the eligibility determination period (any consecutive 12-month period within the 24-month period preceding application for program benefits and/or services) which requires travel such that the worker is unable to return to his/her domicile (permanent place of residence) within the same day.

(b) For purposes of these regulations “Seasonal Farmworker” shall mean a person who during the eligibility determination period (any consecutive 12-month period within the 24-month period preceding application for program benefits and/or services) was employed at least 25 days in farmwork or earned at least \$400 in farmwork; and who has been primarily employed in farmwork on a seasonal basis, without a constant year round salary.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12765, Government Code.

§100651. Grant Application.

The grant application shall include the local plan.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12747, Government Code.

§100655. Determination of Services.

Pursuant to the requirements specified in Section 12747 of the Government Code, local plans shall adhere to the format prescribed in the Request for Local Plan annually issued by the Department.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Sections 12747, Government Code.

§100660. Accounting System Certification.

All new grantees selected for funding under the CSBG program shall submit an accounting system report, prior to receiving funds on a form prescribed by the Department and signed by an independent certified public accountant or an independent State-licensed public accountant, or, in the case of a public agency, the financial officer responsible for providing required financial services to the grantee. The report shall state that the new grantee has established an adequate accounting system with reasonable assurance as to the internal controls to safeguard assets, check the accuracy and reliability of their accounting data, promote operating efficiency, and assure compliance with any other fiscal requirements provided for by law.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(c)(1)(A), Government Code.

§100665. Discretionary Funds.

The Department shall distribute discretionary funds set aside pursuant to Government Code Section 12786.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12786, Government Code.

§100701. Discontinued Funding.

No funds provided under CSBG shall be used to replace disallowed, reduced, or terminated state or local funds.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12761, Government Code.

§100705. Delegation Agreement.

Every delegate agency which enters into a delegation agreement, pursuant to Government Code Section 12750(c), shall adhere to the covenants and conditions contained in the statement of grant action governing the delegation of services and activities.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12750(c), Government Code.

§100715. Budget Flexibility and Indirect Cost Rates.

(a) The following provisions shall apply to budget flexibility:

(1) No originally approved budget line item may be increased or decreased by more than 10%, without prior DEO approval.

(2) This flexibility is the total flexibility to be allowed in any one program year without prior DEO approval.

(b) Changes made within flexibility (as well as those made beyond flexibility with DEO prior approval) must be reflected immediately on the quarterly Financial Progress Report.

(c) For purposes of allocating indirect costs, grantees may use current negotiated indirect cost rates that have been approved by a cognizant Federal agency.

(1) Grantees shall submit to the Department for review the approved cost allocation plans that support the indirect cost rates set forth in the proposed budget at the time the budget is submitted, and a copy of the letter of approval from the cognizant agency which includes date of approval and amount of rate.

(2) All expenditures distributed to indirect costs shall be subject to audit.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(c)(1)(C), Government Code.

§100720. Procurement Standards.

Grantees shall comply with the procurement standards set forth in the Office of Management and Budget Circular (OMB) A-110, dated 7/30/76, Attachment O, Sections 1 through 4b and 4h through 4j, or OMB Circular A-102, dated 9/12/77, Attachment O, Section 1 through 4b and 4g through 4i, and other applicable federal laws or regulations which may supercede these procurement standards.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(c)(2), Government Code.

§100725. Property Management/Disposition Standards and Procedures.

Grantees shall comply with property management standards, set forth in the Office of Management and Budget (OMB) Circular A-110, dated 7/30/76, Attachment N, Sections 3 and 5 or OMB Circular A-102, dated 9/12/77, Attachment N, Sections 3 and 5, and other applicable federal laws or regulations which may supercede these property management/disposition standards.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(c)(3), Government Code.

§100730. Monitoring and Periodic Evaluation.

(a) Grantee's Responsibilities. Grantees shall constantly monitor their performance under grant supported activities to assure that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity of each grant as set forth in the approved grant agreement.

(1) Each grantee shall prepare a quarterly program progress report on the form designated by the Department. Each report shall be submitted to the Department no later than thirty calendar days following the subject quarter.

(2) The performance report for each goal shall include, but not be limited to the following:

(A) Description of actual accomplishments compared to the objective established for the reporting period. The result of activities should be quantified wherever possible.

(B) Reasons why established objectives were not met.

(C) Other information as appropriate.

(b) DEO shall monitor and evaluate the performance of functions, projects and activities supported by CSBG funds frequently enough to ensure that these grant supported activities are accomplished as set forth in the statement of grant action and that CSBG funds are properly disbursed.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(f), Government Code.

§100735. Financial Progress Reports and Audits.

- (a) Each grantee shall prepare a quarterly financial progress report for each CSBG grant award on a form prescribed by the Department. Each report shall be submitted to the Department no later than fifteen (15) calendar days following the applicable quarter.
- (b) Within ninety (90) calendar days of the completion or termination of the contract the grantee shall submit three (3) copies of the report of financial and compliance grant audit.
- (c) Financial and compliance audits shall be conducted in accordance with federal requirements issued by the Office of Management and Budget and in conformance with standards promulgated by the American Institute of Certified Public Accountants and those standards included in "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," issued by the Comptroller General of the United States.
- (d) Agency-wide or single audits prepared in accordance with the Office of Management and Budget Circular A-102 (Attachment P) dated 9/12/77 for local governments, and Office of Management and Budget Circular A-110, dated 7/30/76, for nonprofit corporations, and other applicable federal laws or regulations which may be implemented will fulfill these audit requirements.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(c)(l)(B), Government Code.

§100740. Grant Closeouts for Terminated Grantees.

- (a) All grant closeouts shall be conducted in accordance with the guidelines set forth in the Office of Management and Budget Circular A-102 (Attachment L) dated 9/12/77 for public agencies, and Circular A-110 (Attachments K and L) dated 7/30/76 for nonprofit organizations, and other applicable federal laws or regulations which may supercede these grant closeout procedures.

(b) Grantee shall submit all grant closeout documents including final financial, performance, and other reports required as a condition of the statement of grant action no later than ninety (90) calendar days following the date of termination of the contract.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(e), Government Code.

§100745. Substantial Noncompliance.

For the purposes of Section 12781(c)(4) of the Government Code, “substantial noncompliance” shall mean a material breach of the terms and conditions of the CSBG contract. A breach of contract is material if it violates a substantial right or interest granted under the contract.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(c)(4), Government Code.

§100751. Due Process Rights for Clients Denied Services.

(a) Any person who has applied for benefits and/or services, provided under a contract or delegation agreement with the Department, whose application has been denied has the right to appeal such action to the grantee. For purposes of this section, the Department will consider that there has been a denial of assistance when:

- (1) The benefits, services and/or funds currently are available and;
- (2) The grantee has the authority to provide or disburse such benefits, services and/or funds and;
- (3) The applicant meets or believes that he/she can prove that he/she meets program eligibility criteria.

(b) Each grantee shall establish and make known to all applicants, procedures for the review of partial or complete denial of assistance to any person or household. If the grantee has an existing appeal process which includes the following elements, its continued use will satisfy the requirements of this section. If, however, the grantee has a

procedure which excludes any of the elements below it shall be amended to include those factors which are excluded.

(1) Provisions for notifying the applicant in writing of the reasons for denial of assistance and that he/she may request a review of the denial and may submit additional information (in writing or orally) which the applicant believes would warrant a favorable determination.

(2) Provisions for reviewing the denial of an application for assistance in an expeditious manner if such is requested by the applicant. This shall include the specific assignment of responsibility to a senior level official or standing committee other than the person making the initial determination.

(3) Provisions for expeditiously notifying the applicant in writing of the grantees final decision.

(4) The methods the agency will employ to publicize the existence of the appeals process.

(5) Provisions for ensuring that every effort will be made to provide persons who do not comprehend English with written materials and procedures in the appropriate languages.

(6) Provisions for the retention of documents relating to specific denials of assistance and action(s) taken by the grantee. Such records must be maintained in the grantee's files for three years and shall be available for review by DEO officials upon request.

(c) A written description of the aforementioned required procedures shall be maintained on file by the grantee and shall be available for public inspection.

(d) Any person who has applied for benefits and/or services, provided under a subgrant or contract with the Department, whose application has been denied and who has exhausted all grantee appeal rights, may appeal the denial of assistance to the Department. Should the appeal remain unresolved and the applicant desires to appeal further, the written appeal and all other supportive documentation must be received by the responsible Department official within twenty (20) calendar days of the grantee's final decision.

(e) Under no circumstances shall the grantee or the Department waive the applicant's right to appeal.

NOTE

Authority cited: Section 12781(d)(2), Government Code. Reference: Section 12781(d)(2), Government Code.

§100755. Partisan Political Activities.

(a) Neither the Community Services Block Grant Program nor the funds provided therefore, nor the personnel employed in the administration of the program shall in any way or to any extent engage in the conduct of political activities in contravention of Chapter 15 of Title 5, United States Code and in accordance with Section 675(e) of Public Law 97-35 (42 U.S. 9904(e)).

(b) Neither the Community Services Block Grant Program nor the funds provided therefor, nor the personnel employed in the administration of the program, shall provide voters and prospective voters with transportation to the polls or provide similar assistance in connection with an election or any voter registration activity.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12736(i) and 12781(g), Government Code.

§100760. Non-Discrimination.

(a) A grantee will not discriminate against any employee or applicant for employment because of race, sex, creed, color, religion, or national origin. Also, prohibition against discrimination on the basis of age or with respect to an otherwise qualified handicapped individual shall apply. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, religion, sex, age, handicap or national origin. Such action shall include, but shall not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The grantee agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(b) A grantee will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, handicap, age, sex or national origin.

(c) A grantee will send to each labor union representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be

provided by the contracting officer, advising the labor union representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1985, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) A grantee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the U.S. Secretary of Labor.

(e) Grantee will comply with all provisions of Title VI and VII of the Civil Rights Act of 1964, as amended.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(g), Government Code.

§100765. Public Access to Records.

Any person who wishes to inspect or copy records regularly maintained by a grantee may do so after making a request. Information and records will be made available to the requestor in accordance with the Freedom of Information Act (5 U.S.C. 552), except for information and records which are exempt from the requirements of disclosure pursuant to the Federal Privacy Act of 1974, as amended.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(g), Government Code.

§100770. Significant Numbers.

(a) In ascertaining if "significant numbers" of eligible beneficiaries have petitioned the political subdivision for reconsideration of the subdivision's designation of a particular CAA, the political subdivision must consider the following factors when reviewing the petitions:

(1) The number of petitions which seek reconsideration;

(2) The relative frequency of petitions;

(3) The validity of the complaint in the petitions; and

(4) The gravity of the complaint contained in the petition.

(b) Each political subdivision must apply the aforementioned factors to each petition received charging noncompliance, on a case by case basis. If after reviewing all petition(s) received, the political subdivision is satisfied that the complaints contained in a reasonable number of petitions are valid then such political subdivision will be deemed to have been petitioned by a significant number.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12750.1(a)(3), Government Code.

§100775. Revocation of Recognition and Designation by DEO.

The Director of the Department may revoke the recognition and/or the designation of a community action agency which has failed to comply with the requirements of Government Code Section 12725 et seq. only after complying with the following conditions:

(a) The grantee's contract has been terminated pursuant to California Code of Regulations Section 100780;

(b) The grantee has been provided a reasonable opportunity to comply with the requirements of this Article pursuant to California Code of Regulations Section 100601, and has failed to do such; and

(c) The Department has obtained authority to terminate the contract from the Secretary of the U.S. Department of Health and Human Services, if applicable, pursuant to Section 676 A of the Community Services Block Grant Act, (42 U.S.C. 9905A).

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(c) and (d), Government Code.

§100780. Denial of Refunding, Suspension and Termination of Contract Procedures.

(a) Purpose and Scope--This section establishes the rules and procedures governing the denial of refunding and the suspension and termination of contracts. This section shall not apply to any administrative action based upon any violation or alleged violation of Title VI of the Civil Rights Act of 1964. In case of such violations or alleged violations, the provisions of 45 CFR Part 1010 shall apply.

(b) Definitions.

(1) The term "termination" means the cancellation by the Department of state and or federal assistance in whole or in part, under a contract at any time prior to the time of completion.

(2) The term "suspension" means an action taken by the Department which temporarily suspends state and/or federal assistance under the contract, pending DEO's decision to terminate the contract.

(3) The term "responsible Department official" means the Director, Deputy Director, or any other official who is authorized to make the contract in questions, or the designee of any of these officials.

(c) Failure to Comply with Contract Terms and Conditions.

When a grantee has materially failed to comply with the contract terms and conditions, the Department may suspend the contract in whole or in part.

(d) Suspension Notice.

(1) The responsible Department official shall notify the grantee in writing that the Department intends to suspend a contract, in whole or in part, unless good cause is shown why the contract should not be suspended. The notice shall specify the grounds for the proposed suspension, the proposed effective date of suspension and the grantee's right to submit written material in opposition to the intended suspension and of its right to request an informal meeting at which the grantee may respond with an attempt to show cause why such suspension should not occur. The period of time within which the grantee may submit such written material or request the informal meeting shall be specified in the notice of intent to suspend and shall be no less than 5 days after the notice has been sent. If the grantee requests a meeting, the responsible Department official shall set a time and place for the meeting, which shall not be less than 5 days after the grantee's request is received by the Department. In lieu of the right of the grantee to request an informal meeting, the responsible Department official may on his/her own initiative establish a time and place for such a meeting. In no event, however, shall such a meeting be scheduled less than 7 days after the notice of intent to suspend has been sent to the grantee. The responsible Department official may

extend the periods of time or dates previously referred to and shall notify the grantee of any such extension.

(2) At the time the responsible Department official sends the notice of intent to suspend the grantee, he/she shall also send a copy of it to any delegate agency whose activities or failure to act are a substantial cause of the proposed suspension, and shall inform such delegate agency that it shall be entitled to submit written material or to participate in the informal meeting referred to in subparagraph (d) (1) of this section. The responsible Department official may give such notice to any other delegate agency.

(3) Within 3 days of receipt of the notice, the grantee shall send a copy of these regulations to all delegate agencies which would be financially affected by the proposed suspension action. Any delegate agency which wishes to submit written material may do so within the time stated in the notice. Any delegate agency that wishes to participate in the informal meeting may request permission to do so from the responsible Department official, who may in his/her discretion, grant or deny such permission. In acting upon any such request from a delegate agency, the responsible Department official shall take into account the effect of the proposed suspension on the particular delegate agency, the extent to which the meeting would become unduly complicated as a result of granting such permission, and the extent to which the interest of the delegate agency requesting such permission appears to be adequately represented by other participants.

(4) In the notice of intent to suspend, the responsible Department official shall invite voluntary action to adequately correct the deficiency which led to the initiation of the suspension proceeding.

(5) The responsible Department official shall consider any timely material presented to him/her during the course of the informal meeting provided for in subparagraph (d) (1) of this section, as well as any showing that the grantee has adequately corrected the deficiency which led to the initiation of suspension proceedings. If after considering the material presented to him/her, the responsible Department official concludes the grantee has failed to show cause why the contract should not be suspended, he/she may suspend the grant in whole or in part and under such terms and conditions as he/she shall specify.

(6) Notice of such suspension shall be promptly transmitted to the grantee and shall become effective upon delivery. Suspension shall not exceed a 30 day period unless during such period of time, termination proceedings are initiated or unless the responsible DEO official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(7) During a period of suspension, no new expenditures shall be made by the grantee and no new obligations shall be incurred in connection with the suspended program except as specifically authorized in writing by the responsible Department official.

Expenditures to fulfill legally enforceable commitments made prior to the notice of suspension, in good faith and in accordance with the grantee's approved work program, and not in anticipation of suspension or termination, shall not be considered new expenditures. However, funds shall not be recognized as committed solely because the grantee has obligated them by contract or otherwise to a delegate agency.

(8) The responsible Department official may in his/her discretion modify the terms, condition and nature of the suspension or rescind the suspension action at any time on his/her own initiative or upon a showing satisfactory to him/her that the grantee has adequately corrected the deficiency which led to the suspension and that repetition is not threatened. A suspension partly or fully rescinded may, in the discretion of the responsible Department official, be reimposed with or without further proceeding. Provided, however, that the total time of suspension may not exceed 30 days unless termination proceedings are initiated in accordance with Department policies and procedures governing the termination of contracts or unless the responsible Department official and the grantee agree to a continuation of the suspension for an additional period of time. If termination proceedings are initiated, the suspension shall remain in full force and effect until such proceedings have been fully concluded.

(e) Notice and Pre-hearing Procedures.

(1) If the responsible DEO official believes a grantee's violation of the terms and conditions of its contract is sufficiently serious to warrant termination, whether or not the contract has been suspended, he/she shall state that there appears to be grounds which warrant termination and shall set forth the specific reasons therefor. If the reason(s) result in whole or substantial part from the activities of a delegate agency, the notice shall identify that delegate agency. The notice shall also advise the grantee that the matter has been set down for hearing at a stated time and place in accordance with paragraph (f) of this section. In the alternative, the notice shall advise the grantee of its right to request a hearing and shall fix a period of time which shall not be less than 10 days, in which the grantee may request such a hearing.

(2) Termination hearings shall be conducted in accordance with the provisions of paragraphs (g) and (h) of this section. They shall be scheduled for the earliest practicable date, but not later than 30 days after a grantee has requested such a hearing. Consideration shall be given to a request by a grantee to advance or postpone the date of a hearing scheduled by the Department. Any such hearing shall afford the grantee a full and fair opportunity to demonstrate that it is in compliance with all applicable laws, regulations, and other requirements. In any termination hearing, the Department shall have the burden of justifying the proposed termination. However, if the basis of the proposed termination is the failure of a grantee to take action required by law, regulation, or other requirement, the grantee shall have the burden of proving that such action was timely taken.

(3) If a grantee requests that the Department hold a hearing in accordance with subparagraph (e)(1) of this section, it shall send a copy of its request for such a hearing

to all delegate agencies which would be financially affected by the termination and to each delegate agency identified in the notice pursuant to subparagraph (e)(1) of this section. This material shall be sent to these delegate agencies at the same time the grantee's request is made to the Department. The grantee shall promptly send the Department a list of the delegate agencies to which it has sent such material and the date on which it was sent.

(4) If the responsible Department official pursuant to subparagraph (e)(1) of this section informs a grantee that a proposed termination action has been set for hearing, the grantee shall, within 5 days of its receipt of this notice, send a copy of it to all delegate agencies which would be financially affected by the termination action and to each delegate agency identified in the notice pursuant to subparagraph (e)(1) of this section. The grantee shall send the responsible Department official a list of all delegate agencies notified and the dates of notification.

(5) If the responsible Department official has initiated termination proceedings because of the activities of a delegate agency, that delegate agency may participate in the hearing as a matter of right. Any other delegate agency, person, agency or organization that wishes to participate in the hearing may, in accordance with paragraph (g) of this section, request permission to do so from the presiding officer of the hearing. Such participation shall not, without the consent of the Department and the grantee, alter the time limitations for the delivery of papers or other procedures set forth in this section.

(6) The results of the proceeding and any measure taken thereafter by the Department pursuant to this section shall be fully binding upon the grantee and all its delegate agencies whether or not they actually participated in the hearing.

(7) A grantee may waive a hearing and submit written information and argument for the record. Such material shall be submitted to the responsible Department official within a reasonable period of time to be fixed by him/her upon the request of the grantee. The failure of a grantee to request a hearing, or to appear at a hearing for which a date has been set, unless excused for good cause, shall be deemed a waiver of the right to a hearing and consent to the making of a decision on the basis of such information as is then in the possession of the Department.

(8) The responsible Department official may attempt, either personally or through a representative, to resolve the issues in dispute by informal means prior to the date of any applicable hearing.

(f) Time and Place of Termination Hearings.

The termination hearing shall be held in Sacramento, CA, at a time and place fixed by the responsible Department official, unless he/she determines that the convenience of the Department or of the parties or their representatives requires that another place be selected.

(g) Termination Hearing Procedures.

(1) The termination hearing, the decision on termination and any review thereof shall be conducted in accordance with paragraph (g), (h) and (i) of this section.

(2) The presiding officer at the hearing shall be the responsible Department official. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a sufficient record for a full and true disclosure of the facts and issues. To accomplish these ends, the presiding officer shall have all powers authorized by law, and he/she may make all procedural and evidentiary rulings necessary for the conduct of the hearing. The hearing shall be open to the public unless the presiding officer, for good cause shown, determines otherwise.

(A) After the notice described in subparagraph (g)(6) of this section is filed with the presiding officer, he/she shall not consult any person or party on a fact in issue unless on notice and opportunity for all parties to participate. However, in performing his/her functions under this subparagraph the presiding officer may use the assistance and advise of an attorney designated by the General Counsel of the Department. The attorney designated to assist him/her however, must not have represented the Department or any other party or otherwise participated in a proceeding, recommendation, or decision in the particular matter.

(3) Both the Department and the grantee are entitled to present their cases by oral or documentary evidence, to submit rebuttal evidence and to conduct such examination and cross-examination as may be required for a full and true disclosure of the facts bearing on the issues. The issues shall be those stated in the notice required to be filed by subparagraph (g)(6) of this section, those stipulated in a pre-hearing conference or those agreed to by the parties.

(4) In addition to the Department, the grantee, and any delegate agencies which have a right to appear, the presiding officer, in his/her discretion, may permit the participation in the proceedings of such persons or organizations as he/she deems necessary for a proper determination of the issues involved. Such participation may be limited to those issues or activities which the presiding officer believes will meet the needs of the proceeding, and may be limited to the filing of written material.

(A) Any person or organization that wishes to participate in a proceeding may apply for permission to do so from the presiding officer. This application, which shall be made as soon as possible after the notice of proposed termination has been received by the grantee, shall state the applicant's interest in the proceeding, the evidence or arguments the applicant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(B) The presiding officer shall permit or deny such participation and shall give notice of his/her decision to the applicant, the grantee, and the Department and, in the case of denial, a brief statement of the reasons therefor. The presiding officer may, however,

subsequently permit such participation if, in his/her opinion, it is warranted by subsequent circumstances. If participation is granted, the presiding officer shall notify all parties of that fact and may, in appropriate cases, include in the notification a brief statement of the issues as to which participation is permitted.

(C) Permission to participate to any extent is not a recognition that the participant has any interest which may be adversely affected or that the participant may be aggrieved by any decision, but is allowed solely for the aid and information of the presiding officer.

(5) All papers and documents which are required to be filed shall be filed with the presiding officer. Prior to filing, copies shall be sent to the other parties.

(6) The responsible Department official shall send the grantee and any other party a notice which states the time, place, and nature of the hearing, and the legal authority and jurisdiction under which the hearing is to be held. The notice shall also identify with reasonable specificity the facts relied on in justifying termination and the Department requirements which it is contended the grantee has violated. The notice shall be filed and served not later than 10 days prior to the hearing and a copy therefor shall be filed with the presiding officer.

(7) The grantee and any other party which has a right or permission to participate in the hearing shall give written confirmation to the Department of its intention to appear at the hearing 3 days before it is scheduled to occur. Failure to do so may, at the discretion of the presiding officer, be deemed a waiver of the right to a hearing.

(8) All papers and documents filed or sent to a party shall be signed in ink by the appropriate party or his/her authorized representative. The date on which papers are filed shall be the day on which the papers or documents are deposited, postage prepaid in the U.S. mail, or are delivered in person. The effective date of the notice specifying the grounds which warrant termination shall be the date of its delivery or attempted delivery at the grantee's last known address as reflected in the records of the Department.

(9) Prior to the commencement of a hearing the presiding officer may, subject to the provisions of subparagraph (g)(2)(A) of this section, require the parties to meet with him/her or correspond with him/her concerning the settlement of any matter which will expedite a quick and fair conclusion of the hearing.

(10) Technical rules of evidence shall not apply to hearings conducted pursuant to this section but the presiding officer shall apply rules or principles designed to assure production of relevant evidence and to subject testimony to such examination and cross-examination as may be required for a full and true disclosure of the facts. The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence. A transcript shall be made of the oral evidence and shall be made available to any participant upon payment of the prescribed costs. All documents and other evidence

submitted shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced by either side on the issues.

(11) If the presiding officer determines that the interests of justice would be served, he/she may authorize the taking of depositions provided that all parties are afforded an opportunity to participate in the taking of the depositions. The party who requested the deposition shall arrange for a transcript to be made of the proceedings and shall upon request, and at his/her expense, furnish all other parties with copies of the transcript.

(12) Official notice may be taken of a public document, or part thereof, such as a statute, official report, decision, opinion or published scientific data issued by any agency of the Federal Government or a State or local government and such document or data may be entered on the record without further proof of authenticity. Official notice may also be taken of such matters as may be judicially noticed in the courts of the United States, State of California, or any other matter of established fact within the general knowledge of the Department. If the decision of the presiding officer rests on official notice of a material fact not appearing in evidence, a party shall on timely request be afforded an opportunity to show the contrary.

(13) After the hearing has concluded, but before the presiding officer makes his/her decision, he/she shall afford each participant a reasonable opportunity to submit proposed findings of fact and conclusions. After considering each proposed finding or conclusion the presiding officer shall state in his/her decision whether he/she has accepted or rejected them in accordance with the provisions of paragraph(h) and (i) of this section.

(h) Decision.

(1) Each decision of a presiding officer shall set forth his/her findings of fact, and conclusions, and shall state whether he/she has accepted or rejected each proposed finding of fact and conclusion committed by the parties, pursuant to subparagraph (g)(13) of this section. Findings of fact shall be based only upon evidence submitted to the presiding officer and matters of which official notice has been taken. The decision shall also specify the requirement or requirements with which it is found that the grantee has failed to comply.

(2) The decision of the presiding officer may provide for continued suspension or termination of the contract in whole or in part, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Community Services Block Grant Act, as amended.

(3) If the hearing is held by an independent hearing examiner rather than by the responsible Department official, he/she shall make an initial decision, and a copy of this initial decision shall be mailed to all parties. Any party may, within 20 days of the mailing of such initial decision or such longer period of time as the presiding officer specifies, file with the responsible Department official his/her exceptions to the initial decision and

any supporting brief or statement. Upon the filing of such exceptions, the responsible Department official shall, within 20 days of the mailing of the exceptions, review the initial decision and issue his/her own decision thereon, including the reasons therefor. The decision of the responsible Department official may increase, modify, approve, vacate, remit, or mitigate any sanction imposed in the initial decision or may remand the matter to the presiding officer for further hearing or consideration.

(4) Whenever a hearing is waived, a decision shall be made by the responsible Department official and a written copy of the final decision of the reasonable Department official shall be given to the grantee.

(5) The grantee may request the Director to review a final decision made by the responsible Department official which provides for termination. Such a request must be made in writing within 15 days after the grantee has been notified of the decision in question and must state in detail the reasons for seeking the review. In the event the grantee requests such a review, the Director or his/her designee shall consider the reasons stated by the grantee for seeking the review and shall approve, modify, vacate or mitigate any sanction imposed by the responsible Department official or remand the matter to the responsible Department official for further hearing or consideration. The decision of the responsible Department official will be given great weight by the Director or his/her designee during the review. During the course of his/her review, the Director or his/her designee may, but is not required to, hold a hearing or allow the filing of briefs and arguments. Pending the decision of the Director or his/her designee, the grant shall remain suspended under the terms and the conditions specified by the responsible Department official unless the responsible Department official or the Director or his/her designee determines otherwise. Every reasonable effort shall be made to complete the review by the Director or his/her designee within 30 days of receipt of the grantee's request by the Director. The Director or his/her designee may, however, extend this period of time if he/she determines that additional time is necessary for an adequate review.

(6) The responsible Department official or the presiding officer of a termination hearing may alter, eliminate or modify any of the provisions of this section with the consent of the grantee and, in the case of a termination hearing, with the consent of all delegate agencies that have a right to participate in the hearing pursuant the subparagraph (e)(5) of this section. Such consent must be in writing or be recorded in the hearing transcript.

(7) The procedures established by this section shall not preclude the Department from pursuing other remedies authorized by law.

(i) Right to Counsel; Travel Expenses.

(1) The Department and the grantee shall have the right to be represented by counsel or other authorized representatives in all proceedings under this section. Any grantee or delegate agency if authorized by resolution of their Board of Directors, may transfer sufficient funds from their current operating grants to pay for fees, travel and per diem

expenses of such attorney. The fees for such attorneys shall be the reasonable and customary fees for an attorney practicing in the locality of the attorney. However, such fees shall not exceed \$100 per day, exclusive of travel costs and per diem, without the prior written approval of the Department.

(2) The Board of Directors of the grantee or any delegate agency which has a right to participate in an informal meeting pursuant to subparagraph (e)(8) of this section will also be authorized to designate two persons in addition to an attorney whose travel and per diem expenses to attend the meeting or hearing may be paid from the organization's current operating grant. Such travel and per diem expenses shall conform to the policies set forth in Office of Management and Budget (OMB) Circular A-110, dated 7/30/76, and OMB Circular A-102, dated 9/12/77, and other applicable federal laws or regulations which may supercede these policies.

(j) Denial of Refunding.

(1) No grantee shall be denied refunding by the Department without the Department first complying with paragraphs (e), (f), (g), (h) and (i) of this section.

(2) In addition to the general requirements of subsection (a), the Department shall obtain authority to terminate the contract of community action agency grantees or migrant and seasonal farmworker organization grantees from the Secretary of the U.S. Department of Health and Human Services pursuant to Section 676 A of the Community Services Block Grant Act, (42 U.S.C. 9905A), prior to a denial of refunding.

(k) Disposition of Unexpended Funds.

Upon termination, the disposition of unexpended CSBG funds and of property purchased with program funds shall be in accordance with the provisions of Section 100740 of Article 3 of these regulations, entitled Grant Closeouts for Terminated Grantees. Termination shall not affect expenditures or legally binding commitments made prior to the grantees receipt of notice of the termination provided such expenditures were made in good faith and are otherwise allowable.

NOTE

Authority cited: Section 12781(d)(1) and (e), Government Code. Reference: Section 12781(d)(1), Government Code.

§100790. High Incidence of Poverty.

NOTE

Authority cited: Section 12781(a), Government Code. Reference: Section 12758(b), Government Code.

§100795. Directory.

The Department shall annually publish and distribute a directory of all current grantees providing services under the Community Services Block Grant and the Low-Income Home Energy Assistance Program.

NOTE

Authority cited: Section 12781(d), Government Code. Reference: Section 12781(i), Government Code.